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Part I

SHIPBUILDING TRADE REFORM ACT OF 1991

NOVEMBER 4, 1991.—Ordered to be printed

Mr. ROSTENKOWSKI, from the Committee on Ways and Means, submitted the following

REPORT

together with

ADDITIONAL VIEWS

[To accompany H.R. 2056]

[Including cost estimate of the Congressional Budget Office]

The Committee on Ways and Means, to whom was referred the bill (H.R. 2056) to amend the Tariff Act of 1930 to require that subsidy information regarding vessels be provided upon entry within customs collection districts and to provide effective trade remedies under the countervailing and antidumping duty laws against foreign-built ships that are subsidized or dumped, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments (stated in terms of the page and line numbers of the introduced bill) are as follows:

Page 4, strike out lines 3, 4, and 5, and insert the following:

> (B) attests, regarding any construction carried out with respect to the vessel, that such construction meets one of the requirements set forth in paragraph (2).

Page 4, line 7, insert "(B)" after "(1)".

Page 4, strike out lines 9 through 17, and insert the following:

> (A) No subsidy was granted or otherwise provided with respect to the construction.
>
> (B) The construction was carried out with the benefit of one or more subsidies all of which were

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granted or otherwise provided before the date of the enactment of this section.

(C) The construction was carried out pursuant to a specific contract entered into before October 16, 1991.

(D) The construction was carried out with the benefit of 1 or more subsidies that were granted or otherwise provided during the 2-year period beginning on the date of the enactment of this section, but an amount equal to the value of each such subsidy has been repaid to the agency that granted or otherwise provided the subsidy.

(E) The construction was carried out with the

Page 4, lines 19 and 20, strike out "March 21, 1991," and insert "the date of the enactment of this section,".

Page 4, line 22, strike out "(B)" and insert "(D)".

Page 4, strike out line 24 and all that follows down through line 7 on page 5 and insert the following:

(F) The construction was carried out in a foreign country which is signatory to a trade agreement with the United States that provides for the elimination of construction subsidies for vessels.

(3) APPLICATION OF CERTIFICATION REQUIREMENTS.—With respect to vessels constructed in a foreign country which is a signatory to a trade agreement with the United States that provides for the elimination of construction subsidies for vessels, the requirements set forth in paragraph (2) shall be applied in a manner consistent with that agreement.

Page 6, line 7, strike out "(B) or (C)" and insert "(D) or (E)".

Page 6, line 13, strike out " '(A)", begin the text beginning with "After" on line 13 and ending with "available." on line 19 immediately after the paragraph sideheading on line 12, and indent such text to the same degree as the text appearing on lines 1 through 11.

Page 6, strike out line 20 and all that follows down through line 2 on page 7.

Page 7, line 6, strike out "(A) or the issuance thereof conditioned under paragraph (2)(B)".

Page 7, line 23, strike out "any subsidy certification requirement" and insert "the subsidy certification requirements".

Page 8, line 22, strike out "(B) or (C)" and insert "(D) or (E)".

Page 10, line 5, after the period insert the following: "The builder of the vessel (which, in a case involving vessel repair, includes the person providing the repairs) shall be primarily responsible, and the vessel owner or operator secondarily responsible, for taking such corrective action.".

Page 11, between lines 18 and 19 insert the following:

(8) PUBLIC AVAILABILITY OF DETERMINATIONS AND REVIEW DECISIONS.—The administering authority shall make available for public inspection the text of all de-

terminations and review decisions made under this subsection.

Page 12, lines 1 and 2, strike out "(except as used in paragraph (4)(C))".

Page 13, line 2, strike out "subparagraph (B)." and insert the following: "subparagraph (B), and any restructuring support, except public support for social purposes directly and effectively linked to shipyard closures.".

Page 14, line 14, after the semicolon insert "and".

Page 14, line 16, strike out "; and" and insert ".".

Page 14, strike out lines 17 through 20.

Page 15, lines 16 and 20, strike out "(5)" and insert "(6)".

Page 16, line 3, strike out "C" and insert "D".

Page 17, after line 19, insert the following:

SEC. 6. COST ESTIMATE.

The applicable cost estimate of this Act for all purposes of sections 252 and 253 of the Balanced Budget and Emergency Deficit Control Act of 1985 shall be as follows:

Fiscal year	1992	1993	1994	1995
Changes in outlays	Not applicable			
Changes in receipts	0	0	0	0

I. INTRODUCTION

A. PURPOSE AND SCOPE OF THE BILL

The purpose of H.R. 2056 is to ensure fair trade in the commercial shipbuilding and repair industries by providing effective trade remedies against subsidized and dumped foreign commercial ships. The need for the legislation is due to the lack of adequate protections under current U.S. law or U.S. trade agreements from the effects of foreign unfair trade practices, particularly subsidies, in the commercial shipbuilding and ship repair markets.

The Shipbuilding Trade Reform Act of 1991 is intended to deter, or offset the effects of, subsidies and dumping practices in the construction, reconstruction, or repair of commercial vessels used in international trade. The bill establishes certification requirements which would apply to all self-propelled, sea-going vessels weighing at least 100 gross tons, which are currently required under title IV of the Tariff Act of 1930 to make formal entry. The purpose of the certification requirement is to deter the future granting of foreign shipbuilding and repair subsidies by requiring that vessels which call at U.S. ports certify that they do not benefit from foreign subsidies granted after the date of enactment of the legislation.

Although the legislation will not affect ships which do not call at U.S. ports, and therefore will not effectively discipline all foreign unfair trading practices, the bill recognizes the fact that access to the U.S. market provides substantial leverage to discipline a large segment of the commercial shipbuilding and repair markets. The findings section of the bill states that "a strong, effective multilat-

eral agreement among all shipbuilding nations to eliminate trade-distorting practices in the shipbuilding and repair industry is the best means of providing for fair international competition, however, absent such an agreement, changes in U.S. trade laws are necessary * * *."

The new subsidy certification requirement will not impede the flow of trade to and from the United States, but will merely require that the conduit of trade, just as the goods themselves, be fairly priced, consistent with market forces, not government largesse. Furthermore, the bill recognizes that domestic producers of commercial ships should have access to the trade remedies under the antidumping and countervailing duty laws, just like domestic producers of any other manufactured good.

B. BACKGROUND AND NEED FOR LEGISLATION

On June 8, 1989, the Shipbuilders Council of America filed a petition under section 301 of the Trade Act of 1974, as amended, seeking action by the U.S. Trade Representative (USTR) against the shipbuilding subsidies of Japan, South Korea, Germany, and Norway. During consultations with the petitioners, U.S. Trade Representative Hills suggested multilateral negotiations as a preferable alternative to action under section 301, and offered prompt pursuit of a multilateral agreement if the 301 petition were withdrawn. The Shipbuilders Council agreed to withdraw the petition temporarily to allow the USTR to pursue a multilateral agreement to end shipbuilding subsidies under the auspices of the Organization for Economic Cooperation and Development (OECD) and the Uruguay Round negotiations of the General Agreement on Tariffs and Trade (GATT). In turn, Ambassador Hills agreed to invite the Shipbuilders Council to resubmit its section 301 petition if sufficient progress was not made in the negotiations by March 31, 1990.

On July 21, 1989, Ambassador Hills announced the Administration's strategy to pursue multilateral negotiations, and the withdrawal of the section 301 petition. Ambassador Hills stated in the press release, "I will review our progress toward a multilateral agreement by March 31, 1990. If I believe, in consultation with the industry, that insufficient progress is being made in our negotiations, I will invite the Shipbuilders to re-submit their petition and I will initiate a section 302 investigation and dispute settlement proceedings under the GATT Subsidies Code."

In the OECD, the Working Party 6 (WP-6) had already been established to consider the problem of shipbuilding subsidies. The United States became a full member of the WP-6 in June 1989, following the filing of the Section 301 petition, and began to negotiate on a multilateral agreement with WP-6 members. Other members of the WP-6 include Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Korea, the Netherlands, Norway, Spain, Sweden, and the United Kingdom.

In March 1990, Ambassador Hills reviewed the progress of the negotiations and consulted with the Shipbuilders Council, urging the continuation of the talks. The Shipbuilders Council agreed not to resubmit its section 301 petition at that time, but rather to support the continuation of the multilateral negotiations. In late July

1990, the WP-6 drew up a negotiating schedule for the remainder of that year, and set the week of December 12, 1990 as the concluding week of the negotiations. The negotiations did not conclude, however, and continued into 1991.

On March 21, 1991, the Subcommittee on Trade held a public hearing on foreign shipbuilding subsidies and the status of the OECD negotiations. Ambassador Linn Williams, Deputy U.S. Trade Representative, testified on behalf of the Administration. The Shipbuilders Council of America, accompanied by the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO, also testified.

Ambassador Williams acknowledged at the March 21 hearing that "[w]e had hoped that these negotiations would have ended by now." He asserted, however, that substantial progress had been made, and that the Administration remained hopeful that the negotiations would soon be successful. Ambassador Williams stated:

> In our own minds, we are now looking to the OECD ministerial in June as an opportunity to bless a completed agreement. We are strongly encouraging our trading partners to do the same and have the same timeframe in mind.

Subcommittee Chairman Gibbons expressed his support for the objectives of the OECD negotiations, but expressed frustration at their pace. He warned that "if there is not some pretty quick action, we may have to take some unilateral action in this regard." He announced his intention to introduce legislation on this subject, with an effective date of that very day—March 21:

> I have said in my own mind that today, the first day of spring, is the day on which all subsidies are going to end effectively, as far as entry into the U.S. market is concerned. As soon as the staff gets a piece of legislation together for me, I intend to introduce it, probably right after the first of April, and have it retroactive to today, because I want to encourage these negotiations to go forward and to go forward very realistically and bring it to a conclusion.

On April 24, 1991, H.R. 2056, the "Shipbuilding Trade Reform Act of 1991," was introduced by Representatives Gibbons, Cardin, McGrath, Stark, Moody, et al, and was referred to the Committee on Ways and Means. The bill was referred to the Subcommittee on Trade on April 30.

The OECD negotiations continued, and despite Ambassador Williams' expectations, were not concluded by the OECD Ministerial meeting held on June 4 and 5. Subcommittee Chairman Gibbons consequently decided that time had come for further legislative action. Subcommittee Chairman Gibbons announced on June 13 that the Subcommittee on Trade would hold a public hearing on July 9, on H.R. 2056 and related legislation. He also indicated in the June 13 press release his intention to mark up the legislation soon thereafter.

On July 9, the Subcommittee on trade held a public hearing on H.R. 2056 and related bills, including H.R. 2079 (The Shipbuilding and Repair Industry Free Trade Act of 1991, introduced on June 20

by Representatives Bently, Gaydos, et al). On behalf of the Administration, the U.S. Trade Representative submitted a written statement to the Subcommittee. The Subcommittee received oral testimony from Representatives Bently and Bateman, as well as private sector witnesses. The Subcommittee also received written comments from numerous private sector organizations, as well as the U.S. Delegation of the Commission of the European Communities.

Subcommittee Chairman Gibbons announced at the July 9 hearing that, in light of the failure of the OECD negotiations to conclude the negotiations, he was scheduling a markup of H.R. 2056 on July 11. On July 11, the Subcommittee met in public session and, after adopting a package of minor amendments to the bill offered by Chairman Gibbons, approved the legislation as amended by voice vote. A subcommittee report on the legislation was filed with the full Committee on July 23, 1991.

Negotiations in the OECD continued in July and September, but failed to achieve an agreement. On October 16, the Committee on Ways and Means met in public session and, after adopting four amendments to the bill as reported by the Subcommittee on Trade, ordered the bill as amended favorably reported to the full House.

The first amendment adopted by the full Committee added the findings of the Congressional Budget Office with respect to the revenue effects of the legislation. The second amendment eliminated the retroactive effect of the certification requirement by changing the effective date of the subsidy disciplines to date of enactment, rather than March 21, 1991. The third amendment, as amended, added a contract sanctity provision to the certification requirement, to authorize certification of construction that is carried out pursuant to a specific contract entered into prior to October 16, 1991. The fourth amendment clarified that, if the construction, reconstruction, or repair of a vessel occurred in a country which is a signatory to a trade agreement with the United States providing for the elimination of construction subsidies, the certification requirement would be applied in a manner consistent with such trade agreement.

In light of the fact that international negotiations under the auspices of the OECD have been ongoing since July 1989, and have not resulted in a final agreement providing for the elimination of trade-distorting practices in shipbuilding and repair, it is the view of the Committee that this legislation is justified and necessary to improve the rules and conditions for fair international competition in commercial shipbuilding and repair.

C. SUMMARY OF PRINCIPAL PROVISIONS

In addition to a statement of Congressional findings and purpose, the Shipbuilding Trade Reform Act of 1991 has basically two parts.

The first part of the bill (sections 3 and 4) establishes a certification requirement for vessels. The bill amends title IV of the Tariff Act of 1930 to require the master of a vessel to present a subsidy certification to the U.S. Customs Service as a condition of entry of the vessel. This document would certify that any construction, reconstruction, or repair carried out with respect to the vessel meets one of the following requirements:

(A) No subsidy was granted or otherwise provided;

(B) All subsidies provided were provided before date of enactment;

(C) The construction was carried out pursuant to a specific contract entered into before October 16, 1991;

(D) One or more subsidies were provided during the 2-year period beginning on date if enactment, but an amount equal to the value of such subsidy has been repaid to the agency that provided the subsidy;

(E) One or more subsidies were provided on or after date of enactment, but an amount equal to the value of such subsidy has been paid to the U.S. Treasury;

(F) The vessel was constructed in a foreign country which is signatory to a trade agreement with the United States providing for the elimination of construction subsidies.

The certification requirements will apply to all self-propelled, sea-going vessels weighing at least 100 gross tons, which are currently required to make formal entry under title IV. The bill establishes procedures for the application for certifications, and for investigations by the Secretary of Commerce to ascertain whether a subsidy, in the context of this certification requirement, has been granted or provided to a particular vessel. The Customs Service would collect the certification from the master of a vessel at the time of formal entry. False certification may lead to civil and criminal penalties under section 436 of the Tariff Act, as well as payment to the U.S. Treasury for the amount of subsidies received.

The second part of the bill amends title VII of the Tariff Act of 1930, as amended, to authorize the application of countervailing or antidumping duties to purchases of dumped or subsidized vessels by U.S. persons.

II. Detailed Explanation of Provisions

SECTION 1. SHORT TITLE

Section 1 of the bill states that the short title of this act shall be the "Shipbuilding Trade Reform Act of 1991."

SECTION 2. CONGRESSIONAL FINDINGS AND PURPOSE

Section 2(a) of the bill presents four Congressional findings concerning the termination in 1981 of funding for the construction differential subsidy program; the wide array of foreign subsidies which distort the international market for shipbuilding and ship repair; limited redress under existing trade laws and trade agreements for the trade-distorting subsidies and dumping practices of foreign shipbuilders; and the need for a strong, effective multilateral agreement and, absent such an agreement, changes in U.S. trade laws.

Section 2(b) of the bill states that the purpose of this act is to ensure fair trade in the commercial shipbuilding and repair industry by providing for effective trade remedies against subsidized and dumped foreign commercial ships.

SECTION 3. CERTIFICATIONS REQUIRED OF VESSELS WITH RESPECT TO CONSTRUCTION SUBSIDIES

Certifications

Present law

Part II of title IV of the Tariff Act of 1930, as amended (19 U.S.C. 1431 et seq.) establishes the rules and procedures for the report, entry, and unlading of vessels and vehicles. Sections 431–432 provide the requirements for manifests. Sections 433–435 provide the requirements for arrival and entry of American and foreign vessels. Under these provisions, the general rule is that the master of any foreign vessel, or of any American vessel arriving from a foreign port or place, arriving within the limits of any customs collection district is required, within 48 hours, to make formal entry of the vessel at the customhouse.

Explanation of provision

Section 3 of the bill amends the Tariff Act of 1930 by adding a new section 435A requiring the master of a vessel to deposit with the appropriate customs officer, at the time of making formal entry of the vessel under section 434 or 435, a subsidy certification for the vessel.

The subsidy certification must either be issued by the administering authority (i.e., the Secretary of Commerce, who makes similar subsidy determinations under the countervailing duty law) in response to an application for a subsidy certification filed under subsection (d)(1), or be in such form as the administering authority shall prescribe and signed by the vessel's owner or builder.

The certification must also attest that any construction, reconstruction, or repair (hereinafter referred to as "construction") carried out with respect to the vessel meets one of the following six conditions:

(A) No subsidy was granted or otherwise provided with respect to the construction;

(B) The construction was carried out with the benefit of one or more subsidies all of which were granted or otherwise provided before date of enactment;

(C) The construction was carried out pursuant to a specific contract entered into before October 16, 1991;

(D) The construction was carried out with the benefit of one or more subsidies that were granted or otherwise provided during the 2-year period beginning on date of enactment, but an amount equal to the value of each such subsidy was repaid before the 2d anniversary of such date of enactment to the agency that granted or otherwise provided the subsidy;

(E) The construction was carried out with the benefit of one or more subsidies that were granted or provided on or after date of enactment, but an amount equal to the value of such subsidy (reduced by any amount repaid under (D)) has been paid to the U.S. Treasury; or

(F) The construction was carried out in a foreign country which is a signatory to a trade agreement with the United

States that provides for the elimination of construction subsidies for vessels.

The bill's provisions, including the certification requirement, apply to any subsidy (as defined under the bill) for construction, reconstruction, or repair of the vessel. It should be noted that, as defined under the bill, the term "construction" includes reconstruction or repair.

The main thrust of the certification requirement is to deny access to the U.S. market for vessels which benefit from a subsidy granted or provided on or after date of enactment. The bill as introduced identified March 21, 1991 as the effective date for the subsidy disciplines. The significance of the original March 21, 1991, cut-off date was that on March 21, the Subcommittee on Trade held a public hearing on the subject of foreign shipbuilding subsidies and Subcommittee Chairman Gibbons announced at that hearing his intention to introduce H.R. 2056 and to make it effective as of that day. During the full Committee consideration of the legislation on October 16, however, an amendment was offered and adopted to change the bill's effective date for the subsidy disciplines under section 3 of the bill to "date of enactment."

Subsidies that were granted or provided to vessels prior to date of enactment are therefore grandfathered. Any vessel benefiting from such subsidies would be eligible for certification if all subsidies pre-dated the date of enactment.

It is important to note that this effective date applies to the date the subsidy was granted or provided; it does not apply to the date of the construction, reconstruction, or repair. Nor does it apply to the date of contract or the date of delivery of the vessel. What is relevant in determining eligibility for certification is the date on which a subsidy was granted or provided. For example, a vessel whose initial construction received subsidies in 1979, and which received no subsidies since that time, would be eligible for certification. If that same vessel is subject to reconstruction or repair after date of enactment, and such reconstruction or repair is carried out with the benefit of subsidies, then those post-date-of-enactment reconstruction or repair subsidies would presumably disqualify the vessel for certification under (B) (unless the vessel might qualify under (C), (D), (E), or (F)).

The bill provides four opportunities for vessels which do receive subsidies after date of enactment to be nevertheless eligible for certification, under subparagraphs (C), (D), (E), or (F).

The first opportunity (under subparagraph (C)) is if the construction was carried out pursuant to a specific contract entered into before October 16, 1991. It is the intention of the Committee that the administering authority require the submission of the actual contract as evidence that the contract was, in fact, entered into prior to October 16, 1991. This limited contract sanctity provision was added by the Committee at the markup on October 16. The legislative language of the amendment refers to a "specific" contract to reflect the intent of the Committee that this grandfather clause not reach open-ended contracts or contracts that do not specify the price or the quantity of vessels to be built, reconstructed, or repaired.

The second situation (under subparagraph (D)) is if, during the two-year period beginning on date of enactment, a subsidy was provided but an amount equal to the value of such subsidy was repaid to the agency or agencies that provided the subsidy. It is the expectation of the Committee that proof of such repayment would be required in the form of documentation from the agency or agencies, prior to issuance of the certification.

The third situation (under subparagraph (E)) is if an amount equivalent to the amount of the subsidies is paid to the U.S. Treasury. The effect of the provisions in subparagraphs (D) and (E) is that the unfair advantage conferred by the construction subsidy is offset.

The bill provides only a two-year window (beginning on the date of enactment) for the clause authorizing repayment of subsidies to the subsidizing agency or agencies. This two-year limitation reflects an attempt to minimize any opportunity for foreign governments to recycle subsidies through a revolving fund type of arrangement. This risk was raised by the Shipbuilders Council of America's testimony at the Subcommittee hearing with respect to H.R. 2056 in its original form.

The fourth situation (subparagraph (F)) in which a post-date-of-enactment subsidy may nevertheless qualify for certification is if the construction was carried out in a foreign country which has signed a trade agreement with the United States providing for the elimination of construction subsidies. In such a situation, the provisions of the trade agreement should apply, and would supersede the subsidy disciplines (but not the requirement for presentment of a certification) provided under section 435A. During full Committee mark-up, an amendment was adopted adding paragraph (3) to new section 435A(b), to state explicitly that the certification requirements set forth in paragraph (2) must be applied in a manner consistent with any relevant trade agreement.

These particular provisions (subparagraph (F) and paragraph (3)) are included in the bill in recognition of the fact that the United States is currently engaged in multilateral negotiations under the OECD to eliminate shipbuilding and repair subsidies. It is not the intent of the bill to conflict with international agreements that share the common objective of eliminating trade-distorting subsidies in shipbuilding and repair. Therefore, this provision will allow for the certification of vessels constructed in countries with which the United States has an international agreement.

Presentment of a subsidy certification is an affirmative requirement for formal entry of the vessel; if no certification is presented to the customs officer, then entry of the vessel must be denied. Furthermore, presentment of any forged, altered, or false certification is subject to the civil and criminal penalties provided under section 436 of the Tariff Act.

Application for a subsidy certification may be made by the owner or lessee of a vessel, or the builder of a vessel. Applications shall be made to the administering authority (Secretary of Commerce) and must be accompanied by such supporting documentation as required for the purposes of establishing the eligibility of the vessel for such certification. The administering authority shall decide within 30 days of receiving any application whether to issue or

deny the subsidy certification. Such decision shall be made publicly available. The administering authority may, if appropriate, condition the issuance of the subsidy certification upon the payment to the U.S. Treasury of the amount necessary to satisfy the certification requirement.

If an application for a subsidy certification is denied or conditioned, the administering authority must provide the applicant with a written statement of the reasons for the denial or condition. The applicant may, within 14 days thereafter, request a review by the administering authority of the denial or condition, which shall be conducted in accordance with the hearing procedures applied under section 774 (in connection with hearings authorized under countervailing duty investigations).

The administering authority is not expected, during this 30-day period, to investigate the underlying truth of statements made in each application. It is expected that, most of the time, the administering authority will take the representations made by the applicant at face value; the purpose of this procedure is to review the documentation to make sure that all required documents and attestations are in order. If, however, the administering authority has any reason to doubt the underlying truth of a statement or document (for example, based on prior subsidy determinations by the administering authority, or press reports that the subject shipyard received subsidies after date of enactment) then it should initiate a preliminary investigation under subsection (e) to determine whether there is reasonable cause to believe that the vessel does not meet the subsidy certification requirements.

B. Enforcement

Present law

Section 436 of the Tariff Act of 1930, as amended (19 U.S.C. 1436), sets forth penalties for violations of arrival, reporting, and entry requirements. It is unlawful to fail to report an arrival; to present any forged, altered, or false document, paper, or manifest to a customs officer without revealing the facts; to fail to make entry; or to fail to comply with, or violate, any regulation prescribed under these sections. Violators shall be liable for a civil penalty of $5,000 for the first violation, and $10,000 for each subsequent violation, and any vessel used in connection with any such violation is subject to seizure and forfeiture.

In addition, any master who intentionally commits any violation is, upon conviction, liable for criminal penalties of a fine of not more than $2,000, or imprisonment for 1 year, or both. Furthermore, if any merchandise is imported in or aboard a vessel that was not properly reported or entered, the master shall be liable for an additional civil penalty equal to the value of the merchandise and the merchandise may be seized and forfeited unless properly entered by the importer.

Explanation of provision

Under H.R. 2056, as amended, if the Secretary of the Treasury has reason to believe that an unlawful act under section 436 with respect to the certification requirement has been committed, the

Secretary shall undertake such investigation as may be necessary to ascertain whether action against the master or the vessel, or both, is warranted. Furthermore, if the master presented a self-certification (i.e., a certification pursuant to section 435A(b)(1)(A)(II)) and the Secretary obtains information indicating that there is reason to believe that the vessel does not meet any certification requirement, the Secretary shall so inform the administering authority (Secretary of Commerce) so that the administering authority may further investigate.

C. Investigations

Present law

No provision.

Explanation of provision

The administering authority (Secretary of Commerce) shall, on the basis of either information available to it, information provided by the Secretary of Treasury, or petition from an interested party, initiate a preliminary investigation to decide whether there is reasonable cause to believe that a vessel does not meet the subsidy certification requirements.

If the administering authority finds reasonable cause, it shall then determine whether the vessel meets any subsidy certification requirement identified under section 435A(b)(2). Such determination shall be based on verified information or on best information available, and shall be made in accordance with the hearing procedures applied under section 774 (in connection with countervailing duty proceedings). The bill's provisions on proprietary information, verification of information, and best information available, are all standards and procedures currently followed by the administering authority in its antidumping and countervailing duty investigations under title VII of the Tariff Act.

If the administering authority finds that the vessel does not currently meet any certification requirement, it shall identify what action must be taken in order to satisfy the subsidy certification requirement (e.g., how much subsidy must be repaid or what amount must be paid to the U.S. Treasury). With respect to any corrective action to be taken, the party responsible for building or repairing the vessel shall be primarily responsible, and the vessel owner or operator secondarily responsible. This provision was added during the Subcommittee markup in response to hearing testimony criticizing the bill for focusing on the wrong party, and urging the legislation to focus more directly on the party receiving the subsidy, i.e., the shipbuilder or repairer. If that corrective action is taken, the administering authority shall subsequently issue a subsidy certification for the vessel.

If the administering authority makes a final determination that the vessel does not meet any certification requirement, neither that vessel nor any other vessel owned or leased by the owner of such vessel may arrive or remain at any port or place in the United States. The reason why this penalty is so severe is that at this stage of the process, the subsidized vessel may have already arrived, unloaded its cargo and passengers, and left the U.S. port (if,

for example, the master presented a self-certified document, and an interested party later challenged the underlying truthfulness of the certification). The administering authority, in such a situation, is likely to have little leverage to enforce the certification requirement (i.e., collect the payment of the amount of the subsidy) against the infringing vessel. This ban on the subsequent entry of vessels owned or leased by the owner of the infringing vessel is designed to provide an incentive for the ultimate payment of the subsidy equivalent.

D. Definitions

Present law

19 U.S.C. 1401(a) states that the term "vessel" includes every description of water craft or other contrivance used, or capable of being used, as a means of transportation in water, but does not include aircraft.

There is no definition of the term "subsidy" under title IV of the Tariff Act of 1930, as amended. Section 771(5) of the Tariff Act, however, does provide a definition of the term "subsidy" as used in title VII of the Tariff Act (the countervailing duty law). Under section 771(5), the term "subsidy" has the same meaning as the term "bounty or grant" as that term is used in section 303, and includes, but is not limited to the following:

(i) Any export subsidy described in Annex A to the Subsidies Code Agreement (relating to illustrative list of export subsidies);

(ii) The following domestic subsidies, if provided or required by government action to a specific enterprise or industry, or group of enterprises or industry, whether publicly or privately owned and whether paid or bestowed directly or indirectly on the manufacture, production, or export of any class or kind of merchandise:

(I) the provision of capital, loans, or loan guarantees on terms inconsistent with commercial consideration;

(II) the provision of goods or services at preferential rates;

(III) the grant of funds or forgiveness of debt to cover operating losses sustained by a specific industry;

(IV) the assumption of any costs or expenses of manufacture, production, or distribution.

Explanation of provision

The bill establishes, within new section 435A, definitions for terms used in the bill.

Subsection (f)(1) provides a definition of the term "administering authority" as the officer of the United States responsible for determining under subtitle A of title VII (the countervailing duty law) whether subsidies are provided with respect to merchandise. This means the Secretary of Commerce.

Subsection (f)(2) provides a definition of the term "construction" to include reconstruction and repair.

Subsection (f)(3) provides a definition of the term "subsidy" as used in section 435A which includes eight types of policies and

practices that directly or indirectly support shipbuilding and repair activities. This definition parallels (in a more abbreviated fashion) the definition of the term used in the OECD Fourth Revised Draft Agreement (dated February 1991).

Finally, subsection (f)(4) provides a definition of the term "vessel" as used in section 435A, which means any self-propelled, sea-going vessel of not less than 100 gross tons in weight, which is now exempt from entry under section 441 (i.e., is required under existing law to make entry at the customhouse).

SECTION 4. CONFORMING AMENDMENTS

Present law

Section 434 sets forth requirements for the entry of American vessels. Section 436 sets forth penalties for violations, as described above.

EXPLANATION OF PROVISION

Section 4 of the bill makes conforming amendments to sections 434 and 436 of the Tariff Act of 1930, as amended, consistent with the objectives and provisions of the rest of the bill.

SECTION 5. TREATMENT OF VESSELS UNDER THE COUNTERVAILING AND ANTIDUMPING DUTY LAWS

Present law

Title VII of the Tariff Act of 1930, as amended, authorizes the imposition of antidumping or countervailing duties on foreign merchandise that is being sold at less than its fair value or is subsidized, when such imports are causing material injury to a domestic industry. Under the Tariff Act of 1930, vessels are not considered "merchandise", and "entry" of vessels is different than "entry" of merchandise.

Explanation of provision

Section 5 of the bill adds a new section 771C to title VII of the Tariff Act of 1930, providing for special rules in applying title VII (antidumping and countervailing duty authorities) to foreign-made vessels.

For purposes of title VII, the term "vessel" is defined as any vessel of a kind described in heading 8901 or 8902.00.00 of the Harmonized Tariff Schedule of not less than 100 gross tons in weight. The bill further provides that vessels are deemed to be merchandise for purposes of title VII.

In applying the antidumping and countervailing duty authorities, a vessel shall be treated as "sold for importation into the United States" when a U.S. person enters into a contract for the construction, repair, or purchase of the vessel from the builder. A vessel sold for importation into the United States shall be treated as being "offered for entry for consumption under the tariff laws" at the time of its first arrival at a port or place in the United States, regardless of where the vessel is registered or documented.

The amendments under section 5 would be effective upon date of enactment. In order for antidumping or countervailing duties to be

assessed upon sales of foreign-made vessels, there must first be an investigation initiated under title VII, and the requisite affirmative determinations made by the International Trade Commission and the administering authority. Consistent with existing rules and procedures under title VII, future entries (i.e., first arrivals at a port or place in the United States after construction, reconstruction, or repair) would then be subject to the posting of estimated duties and final assessment of duties.

III. Budget Effects of the Bill

A. COMMITTEE ESTIMATE

In compliance with clause 7(a) of rule XIII of the Rules of the House of Representatives, the following statement is made: the Committee agrees with the estimate prepared by the Congressional Budget Office (CBO) which is included below.

B. STATEMENT REGARDING NEW BUDGET AUTHORITY AND TAX EXPENDITURES

In compliance with clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives, the Committee states that H.R. 2056, as reported, does not provide new budget authority or any new or increased tax expenditures.

C. COST ESTIMATE PREPARED BY THE CONGRESSIONAL BUDGET OFFICE

In compliance with clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives requiring a cost estimate prepared by the Congressional Budget Office, the following report prepared by CBO is provided.

U.S. Congress,
Congressional Budget Office,
Washington, DC, October 29, 1991.

Hon. Dan Rostenkowski,
Chairman, Committee on Ways and Means,
House of Representatives, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed H.R. 2056, the Shipbuilding Trade Reform Act of 1991, as ordered reported by the House Committee on Ways and Means on October 16, 1991. CBO is unable to estimate the effect on revenues of H.R. 2056 because information on future shipbuilding subsidies and on the implementation of the provisions in the bill is insufficient.

At present, most countries subsidize the shipbuilding industry in some form. H.R. 2056 would require all vessels to present a subsidy certification issued by the Secretary of Commerce in order to enter a U.S. port. To receive the certification, the owners, lessees, or builders of the vessel would have to verify that the vessel met one of six conditions. First, in the construction, reconstruction, or repair of the vessel, no subsidy was granted. Second, if a subsidy had been granted, it was granted before the date of enactment of H.R. 2056. Third, the construction occurred pursuant to a specific contract entered into before October 16, 1991. Fourth, a subsidy

was granted after the date of enactment, but repaid to the subsidizing authority before the second anniversary of enactment of the bill. Fifth, a subsidy was granted after enactment, but an amount equal to the subsidy was paid to the U.S. Treasury. Sixth, foreign country in which the construction was undertaken has signed with the U.S. a trade agreement in which that country agreed to eliminate shipbuilding subsidies.

The bill applies a broad definition of subsidy that includes, but is not limited to, loans and loan guarantees, grants, export credits, preferential tax treatment, debt forgiveness and official support for such things as investment. If certification is denied after final review by the Department of Commerce, no vessel owned or leased by the owner would be able to enter or remain in a U.S. port unless a payment is made the U.S. Treasury in the amount of subsidies. The builder of the vessel (or individual involved in repairs) would be primarily be responsible for the payment. The vessel owner or operator would be secondarily responsible.

H.R. 2056 would also make subject to antidumping and countervailing duties all vessels that are constructed, reconstructed, or repaired in a foreign country and sold to, owned by, or leased by a U.S. citizen. At present, vessels are not subject to these duties. The amount of duties is determined by the Department of Commerce. The Customs Service collects the duties.

Under H.R. 2056, revenues could be generated in the form of payments to the U.S. Treasury or the Customs Service of the types described above. The bill, therefore, would be subject to pay-as-you-go procedures under Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985. As mentioned above, however, CBO is unable to estimate the effect on receipts of H.R. 2056 because information on future shipbuilding subsidies and on the implementation of the provisions in the bill is insufficient. Therefore, for purposes of pay-as-you-go considerations. CBO estimates that the effect on receipts of H.R. 2056 in fiscal years 1991 through 1995 would be zero. The estimate required under clause 8 of House Rule XXI also is attached.

PAY-AS-YOU-GO CONSIDERATION

[By fiscal year, in millions of dollars]

	1992	1993	1994	1995
Changes in outlays	Not Applicable			
Changes in receipts	0	0	0	0

If you wish further details, please feel free to contact me or your staff may wish to contact John Stell at 226-2720.

Sincerely,

ROBERT D. REISCHAUER,
Director.

CONGRESSIONAL BUDGET OFFICE ESTIMATE [1]

The applicable cost estimate of this Act for all purposes of sections 252 and 253 of the Balanced Budget and Emergency Deficit Control Act of 1985 shall be as follows:

[By fiscal year, in millions of dollars]

	1992	1993	1994	1995
Changes in outlays		Not Applicable		
Changes in receipts		0	0	0

IV. Other Matters Required To Be Discussed Under the Rules of the House

A. VOTE OF THE COMMITTEE

In compliance with clause 2(l)(2)(B) of rule XI of the House of Representatives, the following statement is made: H.R. 2056 was ordered favorably reported with amendments to the House of Representatives on October 16, 1991 by voice vote.

B. OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports, on the basis of public hearings, review of the status of negotiations on shipbuilding subsidies under the auspices of the OECD, consultations with the Administration and with private sector representatives, and discussions among Members, that enactment of H.R. 2056, as amended, is necessary to ensure fair trade in the commercial shipbuilding and repair industries.

C. OVERSIGHT BY COMMITTEE ON GOVERNMENT OPERATIONS

In compliance with clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee states that no oversight findings or recommendations have been submitted to this Committee by the Committee on Government Operations with respect to the provisions contained in this bill.

D. INFLATIONARY IMPACT

In compliance with clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee states that the provisions of the bill are not expected to have any inflationary impact on the economy.

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[1] An estimate of H.R. 2056, as ordered reported by the House Committee on Ways and Means on October 16, 1991. This estimate was transmitted by the Congressional Budget Office on October 29, 1991.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TARIFF ACT OF 1930

* * * * * * *

TITLE IV—ADMINISTRATIVE PROVISIONS

* * * * * * *

PART II—REPORT, ENTRY, AND UNLADING OF VESSELS AND VEHICLES

* * * * * * *

SEC. 434. ENTRY OF AMERICAN VESSELS.

Except as otherwise provided by law, and under such regulations as the Secretary of Commerce may prescribe, the master of a vessel of the United States arriving in the United States from a foreign port or place shall, within forty-eight hours after its arrival within the limits of any customs collection district, make formal entry of the vessel at the customhouse by producing and depositing with the appropriate customs officer the vessel's crew list, its register, or document in lieu thereof, the clearance and bills of health issued to the vessel at the foreign port or ports from which it arrived, together with the original and one copy of the manifest, and shall make oath that the ownership of the vessel is as indicated in the register, or document in lieu thereof, *its subsidy certification (if required under section 435A),* and that the manifest was made out in accordance with section 431 of this Act.

* * * * * * *

SEC. 435A. CERTIFICATIONS REQUIRED OF VESSELS WITH RESPECT TO CONSTRUCTION SUBSIDIES.

(a) SUBSIDY CERTIFICATION REQUIRED AT ENTRY.—The master of a vessel shall, at the time of making formal entry of the vessel under section 434 or 435, deposit the appropriate customs officer a subsidy certification of the vessel.

(b) SUBSIDY CERTIFICATIONS.—

(1) IN GENERAL.—For the purposes of this section, a subsidy certification for a vessel is a document that—

(A) is either—

(i) issued by the administering authority under subsection (d), or

(ii) in such form as the administering authority shall prescribe and signed by either the vessel owner or person that constructed the vessel; and

(B) attests, regarding any construction carried out with respect to the vessel, that such construction meets one of the requirements set forth in paragraph (2).

(2) CERTIFICATION REQUIREMENTS.—The requirements referred to in paragraph (1)(B) are as follows:

(A) No subsidy was granted or otherwise provided with respect to the construction.

(B) The construction was carried out with the benefit of one or more subsidies all of which were granted or otherwise provided before the date of the enactment of this section.

(C) The construction was carried out pursuant to a specific contract entered into before October 16, 1991.

(D) The construction was carried out with the benefit of 1 or more subsidies that were granted or otherwise provided during the 2-year period beginning on the date of the enactment of this section, but an amount equal to the value of each such subsidy has been repaid to the agency that granted or otherwise provided the subsidy.

(E) The construction was carried out with the benefit of one or more subsidies that were granted or provided on or after the date of the enactment of this section, but an amount equal to the value of each such subsidy, reduced by any amount repaid under paragraph (D), has been paid to the Treasury of the United States.

(F) The construction was carried out in a foreign country which is signatory to a trade agreement with the United States that provides for the elimination of construction subsidies for vessels.

(3) APPLICATION OF CERTIFICATION REQUIREMENTS.—With respect to vessels constructed in a foreign country which is a signatory to a trade agreement with the United States that provides for the elimination of construction subsidies for vessels, the requirements set forth in paragraph (2) shall be applied in a manner consistent with that agreement.

(c) ENFORCEMENT.—If the Secretary has reason to believe that an unlawful act under section 436 relating to this section has been committed, the Secretary shall—

(1) undertake such investigation as may be necessary to ascertain whether action authorized under section 436 against the master of the vessel, or the vessel, or both, is warranted; and

(2) if the vessel is not covered by a subsidy certification issued under subsection (d) and the information obtained during such investigation indicates that there is reason to believe that the vessel does not meet any certification requirement under subsection (b), so inform the administering authority and provide such information to that authority.

(d) ISSUANCE OF SUBSIDY CERTIFICATIONS BY THE ADMINISTERING AUTHORITY.—

(1) APPLICATIONS.—The owner or lessee of a vessel, or the builder of a vessel, may apply to the administering authority for the issuance of a subsidy certification for that vessel. An application shall be accompanied by such documentation as the administering authority may require for purposes of establishing the eligibility of the vessel for such certification, including, if compliance with the requirement in subparagraph (D) or (E) of subsection (b)(2) is alleged, information regarding the amount of each subsidy granted or provided with respect to the vessel

and the payment or repayment of amounts equal to the value of the subsidy.

(2) ACTION ON APPLICATIONS.—After considering the documentation submitted with an application under paragraph (1), the administering authority, within 30 days after the day on which the application was received, shall decide whether to issue or deny the subsidy certification. The administering authority shall make the decision publicly available.

(3) DENIAL OR CONDITION OF ISSUANCE OF CERTIFICATION.—The administering authority shall, if a subsidy certification for a vessel is denied under paragraph (2), provide the applicant with a written statement of the reasons for the denial or condition. The applicant may, within 14 days after the date of the written statement, request a review of the denial or condition under subsection (e)(3).

"(e) DETERMINATIONS AND REVIEWS.—

(1) PRELIMINARY INVESTIGATION.—The administering authority shall—

(A) on the basis of information available to the administering authority;

(B) on the basis of information provided by the Secretary under subsection (c)(2); or

(C) upon petition therefor from an interested party;

initiate a preliminary investigation to decide whether there is reasonable cause to believe that a vessel does not meet the subsidy certification requirements under subsection (b). For purposes of this paragraph, the term "interested party" means—

(i) a person that engages in ship construction in the United States;

(ii) a certified union or recognized union or group of workers which is representative of an industry that engages in ship construction in the United States;

(iii) a trade or business association a majority of whose members engage in ship construction in the United States, and

(iv) an association, a majority of whose members is composed of interested parties described in clauses (i), (ii), and (iii), with respect to ship construction.

(2) DETERMINATIONS AFTER PRELIMINARY INVESTIGATIONS.—If the administering authority makes an affirmative decision under paragraph (1) with respect to a vessel, the administering authority shall determine whether the vessel meets any subsidy certification requirement under subsection (b)(2). If the administering authority makes a negative determination on the basis of failure to meet the requirement under subparagraph (D) or (E) of subsection (b)(2), the administering authority shall calculate, and set forth in the determination, the aggregate value of the subsidy or subsidies used in the construction of the vessel.

(3) REVIEW OF CERTIFICATION DENIALS AND CONDITIONS.—If a person whose application for a subsidy certification was denied or conditioned under subsection (d)(3) makes a timely request for review under this paragraph, the administering authority shall review the denial or condition.

(4) HEARING AND REVIEW PROCEDURES.—The administering authority shall make determinations under paragraph (2), and conduct reviews under paragraph (3), in accordance with the hearing procedures applied by the administering authority under the authority of section 774 with respect to hearings required or permitted under title VII. A determination or decision by the administering authority under paragraph (2) or (3) is subject to judicial review under section 516A in accordance with the applicable procedures and standards applied under such section with respect to reviewable determinations described in subsection (a)(2)(B) of such section.

(5) CORRECTIVE ACTIONS.—If the administering authority makes a negative determination under paragraph (2), or upholds any certification denial or condition after review under paragraph (3), the administering authority shall set forth in determination or review decision the action which must be taken in order to satisfy a requirement for subsidy certification for the vessel under subsection (b). The builder of the vessel (which, in a case involving vessel repair, includes the person providing the repairs) shall be primarily responsible, and the vessel owner or operator secondarily responsible, for taking such corrective action. If that action is taken, the administering authority shall issue a subsidy certification for the vessel and such certification shall be treated as a subsidy certification issued under subsection (d).

(6) CONSEQUENTIAL EFFECTS.—After a negative determination under paragraph (2), or a decision under paragraph (3) upholding a certification denial or condition, becomes final and until a subsidy certification for the vessel concerned is issued under paragraph (5), neither that vessel, nor any other vessel that is owned or leased by the owner of such vessel, may—

(A) arrive at any port or place in the United States; or

(B) remain at any port or place in the United States.

(7) INFORMATION USED IN MAKING DETERMINATIONS OR REVIEWS.—

(A) Information submitted to the administering authority in regard to the making of any determination under paragraph (2) or any review under paragraph (3) shall be treated as proprietary if it fulfills the requirements of section 777(b). Access to proprietary information under protective order shall be permitted under, and governed by, section 777(c).

(B) The administering authority shall verify all information relied upon in making any determination under paragraph (2) or any review under paragraph (3). If the administering authority is unable to verify the information submitted, the authority shall use the best information available as the basis for action. Whenever a party refuses or is unable to produce information requested in a timely manner and in the form provided, the administering authority shall use the best information otherwise available.

(8) Public availability of determinations and review decisions.—the administering authority shall make available for

public inspection the text of all determinations and review decisions made under this subsection.

(f) DEFINITIONS.—As used in this section—

(1) The term "administering authority" means the officer of the United States responsible for determining under subtitle A of title VII whether subsidies are provided with respect to imported merchandise.

(2) The term "construction" includes reconstruction and repair.

(3) The term "subsidy" includes, but is not limited to, any of the following:

(A) Officially supported export credits.

(B) Direct official operating supports to the commercial shipbuilding and repair industry, or to a related entity that favors the operation of shipbuilding and repair, including, but not limited to—

(i) grants;

(ii) loans and loan guarantees other than those available on the commercial market;

(iii) forgiveness of debt;

(iv) equity infusions on terms inconsistent with commercially reasonable investment practices; and

(v) preferential provision of goods and services.

(C) Direct official support for investment in the commercial shipbuilding and repair industry, or to a related entity that favors the operation of shipbuilding and repair, including, but not limited to, the kinds of support listed in clauses (i) through (v) of subparagraph (B), and any restructuring support, except public support for social purposes directly and effectively linked to shipyard closures.

(D) Assistance in the form of grants, preferential loans, preferential tax treatment, or otherwise, that benefits or is directly related to shipbuilding and repair for purposes of research and development that is not equally open to domestic and foreign enterprises.

(E) Tax policies and practices that favor the shipbuilding and repair industry, directly or indirectly, such as tax credits, deductions, exemptions and preferences, including accelerated depreciation, if such benefits are not generally available to persons or firms not engaged in shipbuilding or repair.

(F) Any official regulation or practice that authorizes or encourages persons or firms engaged in shipbuilding or repair to enter into anticompetitive arrangements.

(G) Any indirect support directly related, in law or in fact, to shipbuilding and repair at national yards, including any public assistance favoring shipowners with an indirect effect on shipbuilding or repair activities, and any assistance provided to suppliers of significant inputs to shipbuilding, which results in benefits to domestic shipbuilders.

(H) Any export subsidy identified in the Illustrative List of Export Subsidies in the Annex to the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade or

any other export subsidy that may be prohibited as a result of the Uruguay Round of trade negotiations.

(4) The term "vessel" means any self-propelled, sea-going vessel—

(A) of not less than 100 gross tons in weight; and

(B) not exempt from entry under section 441.

SEC. 436. PENALTIES FOR VIOLATIONS OF THE ARRIVAL, REPORTING, AND ENTRY REQUIREMENTS.

(1) * * *

(a) UNLAWFUL ACTS.—It is unlawful—

(1) * * *

* * * * * * *

(3) to fail to make entry as required by section 434, 435, or 644 of this Act or section 1109 of the Federal Aviation Act (49 U.S.C. App. 1509); [or]

(4) to present any forged, altered, or false subsidy certification to a custom officer under section 435A(a) without revealing the facts;

(5) to enter, or to attempt to enter, any vessel to which a prohibition on arrival in the United States applies under section 435A(e)(6);

(6) to fail to remove promptly from the United States any vessel to which a prohibition on remaining in the United States applies under section 435A(e) (6); or

[(4)] *(7)* to fail to comply with, or violate, any regulation, prescribed under any section referred to in any of paragraphs (1) through [(3)] *(6)*.

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TITLE VII—COUNTERVAILING AND ANTIDUMPING DUTIES

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Subtitle D—General Provisions

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SEC. 771C. SPECIAL RULES IN APPLYING TITLE TO FOREIGN-MADE VESSELS.

(a) DEFINITION.—The term "vessel" means any vessel of a kind described in heading 8901 or 8902.00.00 of the Harmonized Tariff Schedule of the United States of not less than 100 gross tons in weight.

(b) VESSELS CONSIDERED AS MERCHANDISE.—Vessels are merchandise for purposes of this title.

(c) APPLICATION OF SUBTITLES A AND B.—

(1) IN GENERAL.—In applying subtitles A and B with respect to vessels constructed, reconstructed, or repaired in foreign countries—

(A) a vessel shall be treated as sold for importation into the United States when a United States person enters into a contract for—

(i) the construction or reconstruction of the vessel by, or the purchase (or leasing, if the equivalent of a pur-

chase) of the vessel after construction or reconstruction from, the builder; or

(ii) the repair of the vessel; and

(B) a vessel sold for importation into the United States shall be treated as being offered for entry for consumption under the tariff laws at the time of its first arrival at a port or place in the United States after construction, reconstruction, or repair, regardless of where the vessel is registered or documented.

(2) DEFINITION.—For purposes of paragraph (1), the term "United States person" means—

(A) any individual or entity described in subsection (a) of section 12102 of title 46, United States Code;

(B) any agent or other person acting on behalf of any individual or entity referred to in subparagraph (A); or

(C) any person directly or indirectly owned or controlled by any individual or entity referred to in subparagraph (A).

* * * * * * *

ADDITIONAL VIEWS

Continued subsidies to foreign shipbuilders, and other obstacles to trade set up by governments, clearly post a serious disadvantage to U.S. shipbuilders. I share the view that effective action is needed to end foreign shipbuilding subsidies throughout the world. An end to subsidies will provide the U.S. shipbuilding industry a fair and level playing field.

The Shipbuilding Trade Reform Act of 1991, however, is simply the wrong approach to eliminate trade-distorting practices in the shipbuilding sector. Proponents of this bill would have us believe that the negotiating process has been a complete failure and that our only remaining recourse is unilateral protectionism. This is clearly a misconceived notion.

While we all had hoped that negotiations would have been concluded by now, the fact that they have not is not an indication that our trading partners are procrastinating or that negotiations are doomed to failure. In fact, over recent months, the Administration has made significant progress in many respects. More importantly, abandoning the negotiations at this critical time would not serve in the best interest of anyone, including the shipbuilders. Rather, only through negotiations and an international agreement can the U.S. shipbuilding industry obtain the most competitive conditions it desires and deserves.

Furthermore, this legislation will clearly have a detrimental effect on our nation's overall trade competitiveness. As a Member who represents a state where one in five jobs rely on trade, I know of several instances where this legislation will work to the disadvantage of all concerned parties and result in a decline in our nation's balance of trade.

I am particularly concerned with the very real prospect that this legislation would result in the diversion of U.S. origin or destination cargoes from Washington state to Vancouver, B.C. This scenario is not isolated to the Northwest; it is also of great concern to several other regions of the country.

The ports of Washington state have been subjected to several Congressional actions over the past few years which have resulted in the diversion of trade and negative impact to our state's economy. Just last year, Congress tripled the Harbor Maintenance Tax which is already causing ship operators to use Canadian ports over Washington ports. This legislation would result in the diversion of even more cargoes. At a time when the citizens of this nation are looking to Congress to stimulate the economy, it makes no sense to support a bill which would severely disrupt our international trade.

During Committee consideration of this measure, I offered an amendment to address these concerns. Specifically, my amendment would have delayed the effective date of the bill by three months and required the GAO to study the economic consequences of the

measure. If the GAO study determined that U.S. ports would suffer a significant adverse impact, the provisions of the legislation would not apply. While my amendment was rejected, the Committee did agree to request the International Trade Committee to conduct an investigation on the economic effects of enactment of the Shipbuilding Trade Reform Act of 1991. In particular, the investigation will evaluate the adverse effects that U.S. ports, exporters, and importers will be subjected to following enactment of this legislation.

This ITC study will be of significant value to the Congress and the public in recognizing that H.R. 2026 is not the appropriate means to end subsidies.

ROD CHANDLER.

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